



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

ELP  
Docket No. 4376-00  
13 November 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552  
(b) SECNAVINST 1910.4A

Encl: (1) DD Form 149  
(2) Case summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the undesirable discharge issued on 19 September 1968.

2. The Board, consisting of Messrs. McPartlin, Chapman, and Harrison reviewed Petitioner's allegations of error and injustice on 8 November 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 1 June 1967 for four years at age 19. The record reflects that he was advanced to SN (E-3) and served without incident until 12 August 1968 when he was questioned by an agent of Naval Investigative Service concerning allegations of homosexual activity. After being advised of his rights, Petitioner made a voluntary statement that

had participated in homosexual acts prior to and subsequent to his enlistment. Since January 1968, he had committed about 30 homosexual acts. He stated that his admission was made in order to get off the ship so that he could be with his new "lover." The next day, an examination by a psychiatrist found no evidence that Petitioner was feigning homosexuality to obtain an early discharge or to avoid disagreeable duty.

d. On 17 August 1968, Petitioner agreed to accept an undesirable discharge for the good of the service to escape trial by general court-martial. He was notified that he was being separated with an undesirable discharge by reason of unfitness as a "Class II" homosexual. He was advised of his procedural rights and waived those rights. Thereafter, the commanding officer recommended an undesirable discharge by reason of unfitness due to Petitioner's admitted participation in homosexual acts.

e. On 9 September 1968 an enlisted performance evaluation board convened in the Bureau of Naval Personnel and recommended that Petitioner be separated with an undesirable discharge by reason of unfitness. The Chief of Naval Personnel approved the recommendation and directed an undesirable discharge. Petitioner was so discharged on 19 September 1968. His military behavior and overall traits averages at the time of his discharge were 3.5 and 3.57, respectively.

f. Reference (b) sets forth the Department of the Navy's current policies, standards, and procedures for administratively separating enlisted service members. With regard to homosexuality, reference (b) declares such behavior to be incompatible with Naval Service. It provides Navy and Marine Corps officials with the authority to involuntarily separate those service members who commit a homosexual act or acts. If separated, the service member's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under conditions other than honorable unless the homosexual act is committed under one of the following circumstances:

- (1) By using force, coercion, or intimidation;
- (2) with a person under 16 years of age;
- (3) with a subordinate in circumstances that violate customary naval superior-subordinate relationships;
- (4) openly in public view;
- (5) for compensation;

(6) aboard a naval vessel or aircraft; or

(7) in another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

i. In accordance with reference (b), an individual separated due to homosexuality normally receives an honorable discharge if there are no aggravating factors and the conduct and overall traits averages are at least 3.0 and 2.8, respectively.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Based upon Petitioner's overall record of service and current Department of the Navy policy as established in reference (b) and its radical departure from the policy which was in effect on 19 September 1968 the date of Petitioner's discharge, the Board concludes that it would be in the interests of justice to retroactively apply the standards of reference (b) to Petitioner's case. Using the standards of reference (b), the board finds that relief in the form of recharacterization to honorable is appropriate.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued an honorable discharge by reason of unfitness on 19 September 1968 vice the undesirable discharge actually issued on that date. This should include the issuance of a new DD Form 214.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 22 June 2000.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director